

**STATE OF TEXAS  
DEPARTMENT OF INFORMATION RESOURCES  
VIDNET VIDEO CONFERENCING PROJECT SERVICES  
CONTRACT**

This VIDNET Video Conferencing Project Contract is entered between the State of Texas, acting by and through its Department of Information Resources (DIR), Telecommunications Services Division (TSD) and Wire One Technologies, Inc., with its principal place of business at 225 Long Avenue, Hillside, NJ 07205 (Vendor), for the purpose of providing continued VidNet H.320 Network Support and additional H.323 Support Services through DIR/TSD for its Customers. This Contract is the result of a publicly conducted procurement pursuant to Chapter 2157, Texas Government Code. A second contract with DIR, Business Operations Division, for premium video services, is numbered 01-TELE-2002B, and arises from the same procurement.

**I. Definitions**

- 1.1 Contract – means this document and all exhibits, including the Request for Offer, Vendor Response, and clarification and duly executed amendments.
- 1.2 DIR Customers - state agencies and local governments as defined in Section 2054.003, Texas Government Code (Vernon Supp. 2002), and those agencies that purchase through DIR contracts as an exercise of their authority under Chapter 771, Texas Government Code.
- 1.3 H.320 Video Services – means the services customers may receive from the State of Texas owned network using H.320 technology, which after the outsourcing as described in this contract, shall be operated and maintained by Vendor until August 31, 2004, after which it shall be turned off.
- 1.4 H.323 Video Services – means the Vendor owned and operated network using H.323 technology, which is offered pursuant to this contract to DIR Customers.
- 1.5 Administrative fee – the fee paid by Vendor to defray DIR/TSD's cost of administering this contract.
- 1.6 Purchase Order – the Customer's fiscal form or format, which is used when making a purchase.

**II. Statement of Services to Be Performed**

- 2.1.H.320 Services. On December 1, 2002, or 30 days from contract execution, Vendor shall accept joint responsibility for the operation and maintenance of the H.320 Network with DIR/TSD, and full responsibility for the billing and collection of fees from the H.320 customers. Vendor shall assume full responsibility for the operation and maintenance of the H.320 Network from

DIR on January 2, 2002 or 60 days from the contract execution date. Title to the H.320 equipment and other assets are not transferred to Vendor, only the responsibility to operate and maintain until August 31, 2004. Vendor agrees that no new DIR customers shall be connected to the H.320 network between December 1, 2002 or 30 days from contract execution and August 31, 2004. Vendor shall use best efforts to transition existing H.320 Customers to the H.323 Services in a timely manner, consistent with the Vendor's clarification in response to the RFO. Vendor shall provide the continued Vidnet H.320 Network services in accordance with the Service Level Agreements (SLAs) attached hereto as Exhibit 1 of Attachment E. In the event all H.320 Customers are transitioned off the H.320 Network prior to August 31, 2004, Vendor shall so notify DIR/TSD within thirty (30) days of that event, after which time DIR/TSD shall turn off the H.320 Service.

2.2. H.323 Video Services. On or by the forty-fifth (45<sup>th</sup>) day after execution of this contract, Vendor shall deliver to DIR/TSD, for its approval, a transition plan for the commencement of H.323 services to DIR Customers. The plan shall include, but not be limited to, the schedule for installation and operation of all necessary infrastructure and customer support services, including help desk, operator assistance and all related SLAs relating to those services.

2.3. Vendor understands that this is a non-exclusive, unknown quantity contract. DIR makes no representations or warranties that Vendor shall receive any number or volume of Work hereunder.

### **III. Order of Precedence**

The Contract Documents are defined to include this Contract, the Request for Offer and the Vendor's Responses, including any additional clarifications and all Exhibits hereto. In the event of a conflict between the provisions contained in the various documents, the order of precedence shall be as follows:

1. This Contract, including all Attachments;
2. Vendor's clarifying letter dated October 30, 2002;
3. Vendor's Response to the RFO; and
4. the RFO, including all addenda.

### **IV. Pricing**

4.1 For H.320 Video Services. Vendor is authorized to charge DIR Customers of the H.320 Video services the rate of \$990.00 per month per port End User Pricing plus the amount for any usage sensitive services as utilized by the Customer during the billing period, at the rates set forth in Attachments F & G. These service arrangements require:

- Customer to Provide:
  1. Local loop connectivity to DIR or VIDNET POP
- Vendor to Provide or Incur:

All Services as defined within the RFO and per Vendor's response, including but not limited to:

  1. Unlimited calling on VIDNET H.320 and VIDNET H.323 networks and use of existing H.320 network bridge ports

2. All backbone infrastructure costs (disclosed in Attachment H), including but not limited to Vendor procured DIR ATM/PVC connections to DIR POP locations around Texas;
3. Access and backbone facilities between POPs at DIR TEX-AN rates;
4. Vendor to operate the H.320 backbone as necessary for the H.320 Customers;
5. Vendor to install H.320 – H.323 gateway equipment, network management, and operator services per RFO requirements.
  - H 320 Video Service is available only through August 31, 2004 and only is available to DIR Customers of the H.320 service as of the effective date of this contract.

For H.323 Video Services. Vendor is authorized to charge DIR Customers of the H.323 Video services at the rates set forth in Attachments F & G. An overview of the various service offerings is provided in Attachment F, Exhibit 1, VidNet Services Comparison Chart. The chart serves to provide a clear explanation of what is provided with each service package. Customers desiring to add features or services not included in the package pricing may reference the detailed service offerings contained within Attachment F, Exhibit 2 and/or the measured rate, usage sensitive services contained within Attachment G. These service arrangements are defined as follows:

- Customer may Provide:
  1. Via existing or new service, local loop connectivity to DIR or VIDNET POP; or Customer may chose to procure local loop as part of the VidNet service offering.
- Vendor to Provide or Incur:  
All Services as defined within the RFO and per Vendor's response, including but not limited to:
  1. All backbone infrastructure costs, including but not limited to Vendor procured DIR ATM/PVC connections to DIR POP locations around Texas;
  2. Access and backbone facilities between POPs at DIR TEX-AN rates;
  3. Routers, network gatekeepers, etc. at VIDNET H.323 POPs as needed to provide network services;
  4. H.320 – H.323 gateway equipment, network management, and operator services per RFO requirements;
  5. All services required in the RFO, per Vendor response, including but not limited to unlimited calling on VIDNET H.320 and VIDNET H.323 networks and network bridge ports;
  6. Multi-rate Port connection options set forth in Attachment G.

- 4.2 DIR shall bill Vendor for use of the existing infrastructure supporting the current Vidnet H.320 customers on a monthly basis in accordance with the cost schedule provided in the RFO and attached as Attachment H hereto. DIR shall adjust the monthly billings accordingly as circuit/service disconnects are received from the Vendor as H. 320 customers are migrated off of the legacy Vidnet infrastructure. DIR shall bill Vendor for use on a

monthly basis and Vendor shall pay all invoices for services within thirty (30) days of receipt from DIR.

- 4.3 Vendor shall maximize use of the DIR TEXAN 2000 contracts for backbone and transport services to deploy H.323 services, the prices for which are set forth in Attachment I otherwise known as the "TEXAN Pricing Brochure" attached hereto. DIR shall bill Vendor for use on a monthly basis and Vendor shall pay all invoices for services within thirty (30) days of receipt from DIR.
- 4.4 In the event Customer desires to procure only video service (not voice or data) from DIR, the Vendor may provide, at its option, network access utilizing their chosen access technology so long as the access technology is more cost effective than can be obtained via TEXAN and meets the minimum service requirements of the Vendor's Service Level Agreements (SLA) as defined in Attachment E, Exhibit 1.

## **V. Customer Ordering, Billing and Payments**

- 5.1 Customers may order Video Services from Vendor by executing the Customer Order Forms, attached hereto as Attachment E, Exhibit 4. Customer orders for VidNet services are subject to the Terms and Conditions, which are set forth in Attachment E, Exhibit 2. Vendor may utilize the guidelines provided in Attachment J to assist in determining Customer eligibility.
- 5.2 Vendor shall issue monthly invoices to Customers for the services rendered under the related Purchase Order during the preceding month. Customers will pay the Vendor only for services actually received.
- 5.3 All Service invoices are subject to verification by Customer. Vendor payments will be made in accordance with Chapter 2251, Texas Government Code.
- 5.4 Vendor shall notify DIR of situations where Vendor collection efforts have been unsuccessful for undisputed invoices. DIR will work directly with the respective Customer(s) to assist in facilitating prompt payment. Additionally, Vendor shall notify DIR of unresolved billing disputes that exceed 90 days.
- 5.5 DIR and all Customers ordering under this Contract are exempt from the payment of all sales, use and excise taxes; provided however, that Customers eligible under Section 2170.004 (5), Texas Government Code, are not exempt from federal excise tax. Vendor agrees not to bill for any inapplicable taxes.

## **VI. Term of Contract**

- 6.1 This Contract shall begin from the date of execution of this Contract and shall continue through August 31, 2006. This Contract may be extended for up to three (3) additional 1-year periods at DIR's option upon the issuance of written notice to Vendor of its intent to extend the Contract. DIR shall provide

ninety (90) days advance notice of its intent to extend. In the event of early termination or expiration of the Contract, with Customers receiving services from Vendor, the term of this Contract shall be deemed to be extended as necessary to complete the transition of Customers to another service provider.

## **VII. Reporting and Administrative Fees**

- 7.1 Vendor shall be responsible for reporting all services purchased under this Contract. The failure to file the monthly reports, subcontract reports, and pay the administrative fees on a timely basis will constitute grounds for termination of the contract for cause. If Vendor submits three (3) consecutive monthly reports incorrectly, DIR reserves the right to suspend or terminate this contract for cause. Vendor's liability for any breach of this section is limited to the amount of administrative fees owed to DIR by Vendor.

DIR shall have the right to verify required reports and to take any actions necessary to enforce its rights under this section, including but not limited to, compliance checks of Vendor's applicable Contract books.

### **7.2 Detailed Monthly Report**

Vendor shall electronically provide DIR with a detailed monthly report in the format required by DIR showing the dollar volume of any and all sales under this Contract for the previous month period. Reports shall be submitted to the DIR Contract Coordinator. Reports are due on the fifteenth (15<sup>th</sup>) day following the close of the previous month period. It is the responsibility of Vendor to collect and compile all sales under this Contract and submit one (1) monthly report. The monthly report shall include each Customer name, order date, ship date, description, part numbers, Vendor, quantity, unit price, extended price, Customer purchase order number, contact name, Customer's complete billing address, and other information as required by DIR. Each line item sale must contain all information listed above or the report will be rejected and returned to the Vendor for correction.

### **7.3 Historically Underutilized Business Subcontract Reports**

Vendor shall electronically provide each Customer with their relevant Historically Underutilized Business Subcontracting Report, pursuant to this Contract, as required by Chapter 2161, Texas Government Code. Reports shall also be submitted to DIR.

Reports shall be due quarterly in compliance with the following schedule:

September – November: due by December 5<sup>th</sup>

December – February: due by March 5<sup>th</sup>

March – May: due June 5<sup>th</sup>

June – August: due September 5<sup>th</sup>

### **7.4 DIR Administrative Fee**

An administrative fee shall be paid by Vendor to DIR to defray the DIR costs of administering this Contract. All prices quoted to Customers shall include the administrative fee. DIR reserves the right to change this fee upwards or downwards during the term of this Contract, upon written notice to Vendor.

Any change in the administrative fee shall be incorporated in the price to the Customer. The fee on H.320 Video services is \$90.00 per connection per month. The fee on H.323 Video Services is 2.0% per billed monthly services. Checks payable to DIR in the applicable amount shall accompany the detailed monthly reports described in paragraph 7.2 above.

#### **VIII. Termination of Contract or Purchase Order(s); Remedies**

- 8.1 DIR's Right to Terminate for Convenience: DIR may, in its sole discretion, terminate this Contract and/or any Purchase Order, in whole or in part, effective upon the expiration of ninety (90) days from the date of delivery of written notice to Vendor.
- 8.2 DIR's Right to Terminate for Cause. DIR may decide to terminate the Contract when it is found that Vendor has committed a material breach of any covenant, provision or requirement of the Contract by issuing a Notice of Intent to Terminate for Cause. DIR shall give Vendor thirty (30) days from delivery of a Notice of Intent to Terminate for Cause to provide a written statement as to why DIR should not terminate Vendor's performance under the Contract because of such default. At the end of the thirty (30) day period, DIR shall review the Vendor's performance and Customer satisfaction and shall determine whether it is in the best interest of the State to continue the Contract. DIR shall render its decision on the question of Termination for Cause in writing to Vendor and affected Customers. The Notice of Termination for Cause shall be effective from the date of delivery to Vendor. DIR's determination is final.
- 8.3 In the event DIR terminates this Contract as a result of a material breach or default by the Vendor and such breach or default causes or contributes to a loss by DIR or a Customer, DIR shall, in addition to its right to terminate this Contract, have the right to and obtain legal and equitable relief, including the right to recover damages from the Vendor. All remedies described in this Contract shall be deemed to be cumulative.
- 8.4 Vendor's Duty to Conduct a Good faith Transition. In the event of early termination or expiration of the Contract, Vendor shall continue to provide services as required by DIR in order to ensure an orderly transition of Customers to another solution, as selected by DIR. Vendor shall be paid in accordance with the contract rates for all services performed to the date of termination.

#### **IX. Security of Premises, Equipment, Data and Personnel**

- 9.1 Vendor may, from time to time during the performance of this Contract, have access to the personnel, premises, equipment, and other property, including data, files and /or materials (collectively referred to as "Data") belonging to DIR's Customer. Vendor shall use its best efforts to preserve

the safety, security, and the integrity of the personnel, premises, equipment, Data and other property of DIR's Customer, in accordance with the instruction of DIR's Customer.

- 9.2 The Vendor shall be solely responsible and liable for the safety, injury, and health of its Workers during the performance of this Contract. The Vendor shall establish a safety and health program that it manages for workplace safety and health to reduce injuries, illnesses and fatalities by systematically achieving compliance with OSHA standards and its General Duty Clause. The program must be appropriate to conditions in the workplace, such as the hazards to which employees are exposed and the number of employees present. Vendor is solely responsible for training its employees and monitoring its employees' compliance with the program. Nothing herein shall be construed to create a duty in the Customer or DIR to monitor, inspect or report on the safety practices of any Worker, or their compliance with Vendor's safety program.
- 9.3 The Vendor shall be responsible for damage to DIR Customer's equipment, workplace, and its contents when such damage is caused by its Workers, or by equipment provided by the Vendor, if any.
- 9.4 Vendor shall obtain and maintain insurance of the types and amounts shown below, in one or multiple policies, for the duration of this Contract. Vendor is responsible to provide necessary renewals and to provide DIR with copies of the renewals. Evidence of insurance must be acceptable to DIR in its sole discretion and is attached hereto as Attachment B.
- Workers' Compensation and Employer's Liability coverage with limits consistent with statutory benefits outlined in Texas Workers' Compensation Act (Art. 8308-1.01, et seq. Tex. Rev. Civ. Stat.) and minimum policy limits for Employer's Liability of \$250,000 bodily injury per accident, \$500,000 bodily injury disease policy limit and \$250,000 per disease per employee.
  - Commercial General Liability with a combined single limit of \$500,000 per occurrence for coverage AB&C including products/completed operations, where appropriate, with a separate aggregate of \$500,000. The policy shall contain the following provisions:
    - blanket contractual liability coverage for liability assumed under the contract
    - independent contractors coverage
    - State of Texas, DIR, as an additional insured
    - 30-day Notice of Cancellation in favor of DIR
    - waiver of transfer of right to recovery against others in favor of DIR
  - Business Automobile Liability Insurance for all owned, non-owned and hired vehicles with a minimum combined single limit of \$500,000 per occurrence for bodily injury and property damage. Alternate acceptable limits are \$250,000 bodily injury per person, \$500,000 per occurrence

and at least \$100,000 property damage liability per accident. The policy shall contain the following endorsements in favor of DIR:

- Waiver of subrogation
- 30-day Notice of Cancellation endorsement
- DIR as an additional insured

**X. Alcohol and Drug Free Workplace**

10.1 Possession, use, or being under the influence of alcohol or controlled substances by Vendor Workers while in the performance of this Contract at a Customer's site is prohibited.

**XI. No solicitation of State Employees**

11.1 Vendor shall not solicit, directly or indirectly, any employee of DIR or a DIR Customer who is associated with this Contract for a period of 90 days following completion of the Contract.

11.2 DIR and its Customers agree not to solicit employees of the Vendor, during the term of the Contract and for a period of 90 days thereafter.

**XII. Limitations on Reimbursement of Travel Expenses Incurred by Vendor**

12.1 Travel on behalf of the Customer must be pre-approved in writing by the Customer and will be reimbursed according to State Travel Regulations. Vendor is responsible for coordinating travel arrangements. The only categories of cost, which may be billed under this Contract, is for transportation, per diem and lodging. Notwithstanding the actual costs incurred by Vendor and its Workers for transportation, food and lodging, reimbursement amounts for such transportation, food and lodging are limited to the applicable State reimbursement rates for State Employees specified in the General Appropriations Act and the State Travel Regulations.

**Comment [j1]:** This concept is inapplicable in the context of the services Wire One is providing under this contract.

**XIII. Vendor Contact Information**

13.1 Vendor shall notify DIR in writing of any changes to the contact information listed in Attachment C and attached hereto.

**XIV. Point of Contact for DIR**

14.1 The mailing address for contract issues is:  
Director of Telecommunications Services Division  
Department of Information Resources  
P.O. Box 13564  
Austin, Texas 78711

14.2 The mailing address for DIR's legal point of contact is:  
General Counsel



Department of Information Resources  
P.O. Box 13564  
Austin, Texas 78711-3564.

14.3 DIR's principal place of business is at:  
Department of Information Resources  
300 West 15<sup>th</sup> Street, Suite 1300  
Austin, Texas 78701

14.4 Send checks and monthly reports to:  
ATTN: Accounts Receivable  
Department of Information Resources  
P.O. Box 13564  
Austin, Texas 78711-3564.

## **XV. Methods of Notification**

For any written notice required or allowed under the Contract, a party may effect delivery by any one of the following methods: Certified mail, return receipt requested; regular mail return receipt requested; facsimile transmission with written proof of delivery, email with written proof of delivery. All written notices shall be effective upon the date of actual receipt by the party being notified.

## **XVI. Additional Provisions**

16.1 Attachment A hereto contains additional provisions that are a part of this contract.

16.2 Attachments. The Attachments to this Contract include, but are not limited to, the following:

- Attachment A – Standard Clauses, State of Texas, DIR Contracts
- Attachment B -- Certificates of Insurance
- Attachment C -- Vendor Contact Information
- Attachment D – DIR HUB SUBCONTRACTING PLAN (HUB)
- Attachment E – Service Level Agreements, Terms and Conditions
- Exhibit 1 – Service Level Agreement; Use Policies
- Exhibit 2 – Terms and Conditions for Customer Orders
- Exhibit 3 – Terms and Conditions for Equipment Bundled Customer Orders (See contract number 01 TELE 2002B)
- Exhibit 4 – VidNet Service Order Forms
- Attachment F – Exhibit 1 – Vidnet Service Plan Comparison Chart
- Exhibit 2 – H.323 Vidnet Service Plan Pricing
- Attachment G – Unbundled Measured Rate Services
- Attachment H – Current VidNet Infrastructure Cost & Diagram
- Attachment I – DIR Transport Pricing Schedule
- Attachment J – Customer Eligibility Guidelines

Comment [LS2]: Added

**This Contract is executed to be effective as of the date of the last party to sign.**

**Department of Information Resources**

By: \_\_\_\_\_ Date: \_\_\_\_\_

EDDIE ESQUIVEL

Director of Telecommunications Services

Legal: \_\_\_\_

**Vendor: WIRE ONE TECHNOLOGIES, INC.**

By: \_\_\_\_\_ Date: \_\_\_\_\_

LEO FLOTRON

President